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ABSTRACT

Experience indicates that school boards have an inadequate understanding of labor relations, for they tend to relinquish too much of their authority to teachers' associations. A survey of 11 articles pertaining to labor relations from the "American School Board Journal," 1970-82, reveals the following consensus on areas unsuitable for inclusion in contract negotiations: (1) management rights residing in the board; (2) ambiguous or imprecise language, which could be construed to the detriment of the school board's authority; (3) specific money items separated from the total cost; (4) grievance procedures; and (5) constraints on the normal operational practice of the board. In view of recent changes in the economy, school boards (like employers in the private sector) will be able to exercise greater leverage in contract negotiations. They should therefore consider hiring a professional negotiator and otherwise clarify their bargaining strategy in light of their long-range goals. (TE)

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THINGS A BOARD OUGHT NEVER BARGAIN

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Introduction

Boards have been negotiating contracts with teachers for several years, now. Boards have a two-decade experience record from which to analyze the relative effectiveness of differing types of contracts. After making allowances for the statutory differences from one state to another, and after viewing negotiated contracts from several states, it is appropriate to register a general impression: Boards tend to put too much into contracts, constraining their own powers without evidence that such a conferral of powers to the teachers' association will yield higher quality education for the children.

Labor relations is a badly understudied part of educational administration. Yet, in a typical situation, boards expect a kind of expertise from their superintendent that is comparable to what is expected in the realm, say, of curriculum development. This expectation is not likely of fulfillment except in districts that add such expertise to the central office staffs. Only through such an addition can boards be represented by people who can take the explicit preferences of the board, couple them to current policies, practices, statutes, and trends, and carry that perspective through to a contract. Such a lack, coupled to an unwillingness or inability to spend funds to secure that expertise, is just the condition that has led many boards into low quality contracts.

School districts are compartmentalized units in society. They govern independently. The same is true--to one degree or another--of other governmental subdivisions, such as counties and municipalities. Other service agencies overlay society: health, criminal justice, welfare, sanitation

districts, and employment, to identify a few. For those analysts who argue that the education component of the public interest should not be left exclusively to school boards, school administrators and school teachers, the two decades of board-teacher contracts provide one sort of evidence that too much of the public interest has been either conferred away from a public board, or ignored. Other, broadened systems for conflict resolution may be necessary. The exclusive, bipartisan bargaining that has been characteristic in education for over two decades has some flaws within it; interests beyond those of employment may need to be incorporated.

The discussion of an expanded bargaining concept for education has been offered only to demonstrate that school boards are so bounded by a short range view, and school administrators so unaware of some larger perspectives of labor relations, that boards are operationally wedded to a system that may not produce the best service in that school community for the money spent. For example, not many boards are advised on the economic climate's relationship to the availability of human resources and how those data should be linked to a board's goal in bargaining--and whether that should be a one-year or a three-year goal.

The Opinion Research Corporation has been surveying employee attitudes since 1950. Comparative data provide a basis for self evaluation by every board of education. The data have been selected from nearly 250,000 questionnaires and show the following generalizations about professional employees:

1. Professional employees are much less pleased with their employing organization as a place to work in comparison to other organizations they know about.
2. Professional employees are deeply concerned about a decreasing ability of the organization to provide job security.

3. Professional employees are gratified at comparative rates of pay.
4. Professional employees are deeply concerned about their decreasing fringe benefit program.
5. Professional employees are frankly cynical that advancement in the organization is by way of ability--a drastic decrease from the 1950s.
6. Professional employees dropped sharply in their ratings of abilities in the organization top management.
7. Professional employees delivered the most severe blow in the area of the organization's willingness to listen to problems, and act upon them.[1]

Although the surveys done over three decades were in private enterprises, several of the questions are pertinent for school boards. The findings point the way toward some items which, at least, merit consideration for bargaining. The point: when did your superintendent of schools candidly discuss any of these employee relations areas? When did your board discuss what to handle in a contract, what in policy?

The procedure for this study was to examine the Association's major publication. The American School Board Journal, 1970-1982, was examined in a search for articles devoted to bargaining and contracts. The larger area of school labor relations included several articles not appopriate for this presentation. From over the twelve year span, eleven articles were found dealing with the topic of what should not be bargained.

Findings of Survey and Analysis

In stipulating the necessity for boards to recognize that bargaining is an economic process within political constraints, Lieberman identified two basic rules:

1. Geographical nearness to other board-teacher settlements tend to govern the contents of other contracts.
2. The dollar and other terms of other contracts form a comparability base that influences other contracts.

Reading on in that article, a reader can discern two DON'Ts for boards:

1. DON'T give up the power to decide on what/who is comparable.
2. DON'T negotiate or settle specific money items--small parts of the larger contract--on which the school district compares badly.[2]

Out of experiences in a state that had a strong pro-labor history, Page opined that Michigan's public employee bargaining law was a bad one, and suggested that other states could learn from Michigan's experience. He advocated that boards should NOT negotiate

1. maximum class size
2. any issue not exclusively related to teachers
3. maintenance of school standards
4. grievances, as a general aspect of employment
5. or include the union's code of ethics
6. any clauses that substantially restrict normal board operations.[3]

Recognizing that board policy formulation was hardly a precise endeavor, Lieberman gave advice on a single aspect of school operation. A board should NOT make itself a part of the formal grievance procedure used by teachers having a complaint. To do so places the board in a position of inviting teacher complaints and subsequently, squandering the board's time. If final appeal of unresolved grievances must be directed to the board as a result of statute, that is quite another thing. In the absence of such directive statutes, DON'T make it a part of the contract.[4]

Accountability has become a professional catch word. Teacher accountability, in terms of academic achievement of pupils, is nebulous because there are so many variables--not the least of which is home television. If teachers are to be made accountable for the performance of their pupils, and that condition apart of the contract, Sparks and Strauss caution that the contrast itself must undergo substantial change. Primarily, that change must be in

the direction of precision with vocabulary. DON'T negotiate teacher accountability until all terms are defined and word choice precise.[5]

Glime contends that teachers want to bargain to use that discussion setting as the device to take away certain management rights from boards. From several cases, a new demand on specificity seems clear and part of that is a need for boards to specify that all management rights reside within the board, except as it may specifically confer or contract away certain rights. For Glime, contract statements should include other stipulations such as a clause that teachers pledge not to strike. From the basic concept of the board as employer, DON'T negotiate management rights.[6]

Reviewing a book on labor law by Robert Walsh, Friese carries forward a substantial commentary of his own on the matter of public employee strikes. After reviewing the incidence of public employee strikes, and the relative lack of services to control such strikes through state statutes, the AFT's mid 1960s position is reviewed, in which private sector-NLRB conditions are advocated for schools. Friese has two recommendations:

1. DON'T negotiate items that are likely to become state concerns, with statutory controls.
2. DON'T waste board time in trying to oppose teacher bargaining when that is clearly the order of the day.[7]

Too often, boards and board representatives know less about union-management relations than do teacher representatives. Especially, contends Lieberman, this is true of the rhetoric of negotiations. Words chosen by teachers are not selected as a courtesy to boards. They are chosen to best carry the burden of teacher interests, to broaden the latitude of the teacher's work setting. Sometimes, proposals are couched in wordage never intended by the teachers to become a part of any contract, but rather to be a disconcerting or detracting aspect of bargaining, depending upon extravagant

word choices. DON'T agree to any contract clauses initiated by teachers until there is clear understanding of precisely what is meant by the words being used.[8]

Areas of authority, conferred to teachers by contract from the board, are very difficult to recover. Nothing should be bargained away accidentally, or without full understanding that it will not produce dire side effects. When power is conferred, Glime points out, boards should follow with pressure on the union to perform responsibly. Remember that giveaways cannot be reclaimed quickly--except at a price. He recommends four specifics DON'Ts.

1. DON'T make any concessions as a result of name calling from teachers, even when those names are Cheapskate, Mizer, Piker, and so on.
2. DON'T forsake the management rights clause--not any part of it.
3. DON'T spend new money for salaries without getting some contract concessions.
4. DON'T expand teacher grievance rights.[9]

The major issue in bargaining, as seen by Divoky, centers upon the question, "Who controls school policy?" From Los Angeles an issue arose that involved citizens, board and teachers--and students, for the item was a contract article that allowed corporal punishment. It was a negotiated reversal of earlier board policy. Without attempting to clearly separate "working conditions" from "policy," Divoky advised DON'T take items from a policy book and place them in a contract.[10]

When the "negotiations season" rolls around, teachers begin to move for a new contract. That push carries a pressure all its own, aimed at boards. Boards may seek a professional, a buffer, and hire a negotiator. The board must consider selection, use, and evaluation of that service. The goal is an acceptable contract, one that provides a quality educational setting. Bailey and Kovalik advise some procedures for such a setting.

"1. DON'T yield to pressure and engage in giveaways.

2. DON'T hire any negotiator precipitously, or until the board has settled on what it wants.

3. DON'T hire any negotiator without giving clear direction on who he reports to.

4. DON'T hesitate to evaluate the performance of that hired (outside) negotiator."

In a negotiations setting, boards must be clear on what a contract does. The contract is a take-away instrument. Boards cannot get powers for the operation of schools from teachers, Walsh points out. Board goals must be part of the contract considerations, even when those goals are not attainable --perhaps, not politically feasible--in the contract period. A strong advocate for the positions of management, Walsh suggests that boards

1. NOT forsake their self image as the ultimate authority of the schools

2. NOT forget that contracts take powers from boards and confer them elsewhere.

3. NOT commence any new bargaining until the existing contract has been thoroughly examined, looking for giveaways that should not be there

4. NOT ever negotiate "tricky" areas such as class size, citations to statutes, and maintenance of standard clauses. [12]

Observations and Conclusions

The American economy is not robust in 1983. Many of the negative characteristics already seen to be widespread in the private sector of the economy are present, and will be increasingly present, in the public sector. Ordinarily, public organizations and institutions have a slower reaction to variations in the economy than does private enterprise. Partially, this is due to the civil service-like employment setting, which it must be remembered was a reaction against the political spoils system that placed

utterly inadequate people in public schools, and partially because private industry can close its enterprise.

Even a casual observer of the labor relations scene must be aware of a changed attitude in union approaches to management. For example, witness the steel industry settlement of February, 1983 that featured a salary (wage) reduction for steelworkers. This is an attempt to save an industry by self denial of lost wages in the short run. It is a high risk for unions and demands unusual trust on the part of employees toward management that, by not taking those wage gains, the job will be there over a long period of time. It is a trade of immediate salary gains for job security. Concessions by employees are realistic recognition that the American economy is not robust.

Some of that attitude must permeate public labor relations and school districts. Like the steel workers, teachers have job concerns beyond the current year. That fact is an opportunity for boards in bargaining and it represents a need for boards to be positive, to DO some things differently, to muster a higher devotion to the job of teaching as a very desirable occupation.

In the meantime, and in the short view, this group of eleven articles contained some items NOT to do, as those items come through repetitiously. Boards should address with caution any negotiations

1. of management rights residing in the board
2. that include language uncertainties or ambiguities
3. where specific money items are separated from the total package cost
4. calling for the board to serve as a grievance tribunal
5. that might constrain normal operational practice of the board.

Appendix A

Selected Current Generalizations About Professional Employees

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1. Professional employees are much less pleased with their employing organization as a place to work in comparison to other organizations they know about.

2. Professional employees are deeply concerned about a decreasing ability of the organization to provide job security.

3. Professional employees are gratified at comparative rates of pay.

4. Professional employees are deeply concerned about their decreasing fringe benefit program.

5. Professional employees are frankly cynical that advancement in the organization is by way of ability--a drastic decrease from the 1950s.

6. Professional employees dropped sharply in their ratings of abilities in the organization top management.

7. Professional employees delivered the most severe blow in the area of the organization's willingness to listen to problems, and act upon them.

Appendix B

The DON'Ts of Bargaining

Lieberman

1. DON'T give up the power to decide on what/who is comparable.
2. DON'T negotiate or settle specific money items--small parts of the larger contract--on which the school district compares badly.
3. DON'T make the board itself part of the formal grievance procedure used by teachers having a complaint.
4. DON'T agree to any contract clauses initiated by teachers until there is clear understanding of precisely what is meant by the words being used.

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1. DON'T negotiate maximum class size.
2. DON'T negotiate any issue not exclusively related to teachers.
3. DON'T negotiate maintenance of school standards.
4. DON'T negotiate grievances, as a general aspect of employment.
5. DON'T negotiate or include the union's code of ethics.
6. DON'T negotiate any clauses that substantially restrict normal board operations.

Sparks and Strauss

1. DON'T negotiate teacher accountability until all terms are defined and word choice precise.

Glime

1. DON'T negotiate management rights.
2. DON'T make any concessions as a result of name calling from teachers, even when those names are Cheapskate, Mizer, Piker, and so on.
3. DON'T forsake the management rights clause--not any part of it.
4. DON'T spend new money for salaries without getting some contract concessions.
5. DON'T expand teacher grievance rights.

Friese (Walsh)

1. DON'T negotiate items that are likely to become state concerns, with statutory controls.
2. DON'T wast board time in trying to oppose teacher bargaining when that is clearly the order of the day.

Divoky

1. DON'T take items from a policy book and place them in a contract.

Bailey and Kovalik

1. DON'T yield to pressure and engage in giveaways.
2. DON'T hire any negotiator precipitously, or until the board has settled on what it wants.
3. DON'T hire any negotiator without giving clear direction on who he reports to.
4. DON'T hesitate to evaluate the performance of that hired (outside) negotiator.

Walsh

1. DON'T forsake board's self image as the ultimate authority of the schools.
2. DON'T forget that contracts take powers from boards and confer them elsewhere.
3. DON'T commence any new bargaining until the existing contract has been thoroughly examined, looking for giveaways that should not be there.
4. DON'T ever negotiate "tricky" areas such as class size, citations to statutes, and maintenance of standard clauses.

References

[1]Harry W. O'Neill, "Changing Employee Values in America," Employee Relations Law Journal, Vol. 7, No. 1 (Summer, 1981): 21-35.

[2]Myron Lieberman, "How To Play The Comparison Game in Collective Bargaining," American School Board Journal, Vol. 162, No. 5 (May, 1975): 43-45.

[3]John Pagen, "Michigan Learned These Seven Bargaining Lessons--The Hard Way." ---------- (August, 1975): 37.

[4]Myron Lieberman, "Why Smart School Boards Keep Hands Off Of Grievance Procedures," ---------- (July, 1975): 29-31.

[5]Richard K. Sparks and Hermina Strauss, "You Say You Want to Write Teacher Work Standards Into Your Next Contract?" American School Board Journal, Vol. 160, No. 8 (August, 1973): 32-34.

[6]Raymond G. Glime, "Bargaining With Teachers: The Things A Board Can Demand," American School Board Journal, Vol. 156, No. 11 (June, 1971): 21-23.

[7]George R. Friese, "Boardmen Must Rush to Integrate Bargaining Laws They Can Live With," American School Board Journal, Vol. 157, No. 8 (February, 1970): 12-14.

[8]Myron Lieberman, "How To Understand the Rhetoric of Collective Bargaining," American School Board Journal, Vol. 164, No. 8 (August, 1977): 63-65.

[9]Raymond G. Glime, "How to Increase Board Power Through Collective Bargaining," American School Board Journal, Vol. 165, No. 3 (March, 1978): 46-48.

[10]Diane Divoky, "Teachers, Covet Your Policy Power," American School Board Journal, Vol. 166, No. 6 (June, 1979): 30-31.

[11]Max A. Bailey and Thomas Kovalik, "How to Hire A Negotiator," American School Board Journal, Vol. 166, No. 10 (Oct., 1979): 37.

[12]Roger Walsh, "Don't Let School Board Authority Be Eroded," American School Board Journal, Vol. 169, No. 2 (February, 1982): 26ff.